

RESOLUTION 6-08-2002

DIGEST

Intestate Succession: Inheritance Through a Child Born out of Wedlock

Amends Probate Code section 6452 to allow intestate succession from a child born out of wedlock only if the child was aware of the existence of or had contact with the parent.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Probate Code section 6452 to allow intestate succession from a child born out of wedlock only if the child was aware of the existence of or had contact with the parent. The resolution should be disapproved because it is vague and impractical.

Probate Code section 6452 allows the property of a child born out of wedlock to pass by intestate succession to the child’s natural parents or the relatives of those parents only if the parent acknowledged the child and contributed to the child’s support. For instance, in *In re Griswold* (2001) 25 Cal.4th 904, the child’s natural father had acknowledged his parentage to the State of Ohio and contributed child support for 18 years. Accordingly, the court allowed half siblings of the decedent to inherit from Griswold, even though Griswold did not know either them or the common father.

Intestate succession is governed entirely by statute. The succession statutes are designed to carry out “the intent a decedent without a will is most likely to have had.” (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) On the assumption that a decedent who does not know his or her natural parent would probably not intend that the unknown parent inherit from him or her, this resolution would add the requirement that the decedent either had to know of the existence of the parent, or had contact with him or her or a relative.

Although *Griswold* may have illustrated a problem that needs fixing, this resolution is not the answer. The new criteria are vague and the justification for them is uncertain. In particular, the nature and extent of the requisite contact is left unstated. If the child met the parent once when the child was still an infant, it would justify an inference of intent by the child to benefit that person upon the child’s death. Nor does the resolution specify the nature of the child’s awareness, i.e., whether it must be aware that the person is a parent or other relative, or merely aware that the person exists. Moreover, the focus on the deceased child’s knowledge presents difficult practical problems of how to prove that knowledge when the primary witness – i.e., the person whose knowledge is at issue – is dead. Finally, the justification for the requirement that the parent or relative openly hold out the child as the parent’s natural child is unclear. The purpose of the resolution is not furthered by this requirement, because an acknowledgment of the child among other family members would serve the same function.

SECTION/COMMITTEE REPORT

TRUST AND ESTATE SECTION

Recommends: Oppose

Reasons: The Section believes that the proposed resolution requires further study because of the difficult issues raised concerning the inheritance rights of persons related to and inheriting from unacknowledged illegitimate issue. This matter has been assigned to the Litigation subcommittee for further study.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Probate Code section 6452 to read as follows:

- 1 §6452
- 2 If a child is born out of wedlock, neither a natural parent nor a relative of that parent inherits
- 3 from or through the child on the basis of the parent and child relationship between that parent and child
- 4 unless ~~both~~ all of the following requirements are satisfied:

- 5 (a) The parent or a relative of the parent acknowledged the child and openly held out the child
6 as the parent's natural child.
7 (b) The parent or a relative of the parent contributed to the support or the care of the child.
8 The child was aware of the existence of or had contact with the parent or a relative of the
9 parent.

(Proposed new language underlined;; language to be deleted stricken.)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

Existing Law: Permits the parent or relatives of the parent of a child born out of wedlock to take through intestate succession, despite the fact that the child never even knew of their existence, so long as the parent acknowledged the child and “contributed to the support” of the child.

This resolution: Would amend California Probate Code section 6452 to require that a child born out of wedlock be aware of the existence of his or her natural parent or that parent’s relatives, and to require that the parent openly treat the child as his or her own before that parent or one of the parent’s relatives may inherit from the child through intestate succession.

The Problem: In In re Griswold, 25 Cal. 4th 904 (2001), the California Supreme Court affirmed a decision by the Court of Appeal that the half-siblings of a child born out of wedlock, whom the child had never met, and who he was unaware even existed, had an intestate right of succession to his estate, pursuant to Probate Code section 6452. While the Court noted that one of the purposes of the statutory predecessor to section 6452 was to “provide rules that are more likely to carry out . . . the intent a decedent without a will is most likely to have had,” Id. at 912, the Court also noted that “succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.” Id. at 907. Therefore, while the language of Probate Code section 6452 produced a result that was surely not consistent with the deceased’s intent, the Court felt it could not reach a contrary decision. Notably, in a concurring opinion, Justice Brown called on the legislature to “remedy this apparent defect in our intestate succession statutes.” Id. at 925. This resolution will change this legal trap for the unwary, by providing that natural parent of a child born out of wedlock, or that parent’s relatives, may not take through intestate succession unless the parent has not only “acknowledged” the child but has done so openly while treating the child as his own, has paid for the child’s support, and the child is aware of the parent or relative, or has had contact with them. The new language added is copied from Family Code §7611(d) regarding presumption of paternity, for consistency.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Julianne Sartain Bancroft, Snell & Wilmer L.L.P., 1920 Main Street, Suite 1200, Irvine, California, 949/253-4982

RESPONSIBLE FLOOR DELEGATE: Julianne Sartain Bancroft

COUNTER ARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

Existing law provides in many situations for succession of individuals unknown to decedent. As drafted, the proposal is so vague that it would not have the effect intended. What child is “not aware” of the “existence” of a parent? The proposal would have better given effect to Griswold had it focused on knowledge of the identity of a parent. Finally, as a matter of public policy, the proposal perpetuates and extends the distinction and penalty under the law for out-of-wedlock relationships.